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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

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8 BANK OF AMERICA, N.A., as successor
9 by merger to BAC HOME LOANS
10 SERVICING, LP f/k/a COUNTRYWIDE
11 HOME LOANS SERVICING, LP,

12 Plaintiff,

13 v.

14 HIGHLAND RANCH HOMEOWNERS
15 ASSOCIATION; LVDG LLC SERIES 141
16 aka LVDG SERIES 141; THUNDER
17 PROPERTIES, INC.; ALESSI & KOENIG,
18 LLC,

19 Defendants.

Case No. 3:16-cv-00154-MMD-VPC

ORDER

20 This case arises out of a homeowner association's ("HOA") foreclosure and
21 involves the notice provisions applicable to foreclosure sales under Nevada Revised
22 Statutes ("NRS") Chapter 116. Currently there is a federal-state split in the interpretation
23 and effect of the notice provisions found at the pre-2015 version of NRS Chapter 116.
24 However, a question regarding the applicable notice provisions was recently certified to
25 the Nevada Supreme Court, asking whether the notice provisions found at NRS § 107.090
26 were incorporated by reference into the pre-2015 version of NRS § 116.31168. Because
27 the parties in this action do not appear to dispute that Bank of America, N.A. ("BANA")
28 received actual notice of the HOA's foreclosure sale (see ECF No. 40 at 3; see also ECF
No. 47 at 6 (responding that actual notice is irrelevant)), this Court *sua sponte* stays this
action in its entirety until the Nevada Supreme Court resolves the certified question.

A district court has the inherent power to stay proceedings in its own court. *Landis*
v. N. Am. Co., 299 U.S. 248, 254-55 (1936). "A trial court may, with propriety, find it is

1 efficient for its own docket and the fairest course for the parties to enter a stay of an action
2 before it, pending resolution of independent proceedings which bear upon the case.”
3 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding
4 whether to grant a stay, courts should consider “the possible damage which may result
5 from the granting of a stay, the hardship or inequity which a party may suffer in being
6 required to go forward, and the orderly course of justice measured in terms of the
7 simplifying or complicating of issues, proof, and questions of law which could be expected
8 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)
9 (quoting *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that
10 would be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No.
11 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting
12 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

13 The Court finds that significant judicial resources will be saved if the Court refrains
14 from issuing a decision in this case until the Nevada Supreme Court determines whether
15 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. See *SFR*
16 *Investments Pool 1, LLC v. Bank of New York Mellon*, Nev. S. Ct. Case No. 72931. NRS
17 §§ 116.31168 and 107.090 prescribe two fundamentally different notice mechanisms. The
18 first requires lenders to affirmatively request notice of foreclosure sales from HOAs. The
19 second requires HOAs to notify lenders as a matter of course, regardless of whether a
20 request was made.

21 The Ninth Circuit recently held the first mechanism to be facially unconstitutional
22 because it impermissibly shifts the burden to lenders in violation of their procedural due
23 process rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156
24 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate
25 this burden-shifting problem by requiring the HOAs to provide notice to lenders absent
26 any request from lenders for notice; however, the Ninth Circuit has held that NRS §
27 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit
28 reasoned, the opt-in notice scheme would be superfluous. *Id.*


1 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now
2 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has
3 hinted it will answer the question in the affirmative. See *Nationstar Mortg., LLC v. Saticoy*
4 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada
5 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would
6 arise in this case: did the HOA provide notice to the lender consistent with NRS §
7 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to
8 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
9 the lenders’ constitutional due process rights. See, e.g., *U.S. Bank, N.A. v. Emerald Ridge*
10 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
11 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
12 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
13 in which HOAs gave lenders notice consistent with NRS § 107.090). Because actual
14 notice appears to be at issue here, resolution of the certified question is relevant.

15 The Court therefore stays all proceedings in this case until resolution of the
16 certified question in Nev. S. Ct. Case No. 72931. The stay will be lifted upon such
17 resolution. The parties must file a status report within five (5) days from such resolution.

18 It is further ordered that BANA’s Motion for Partial Summary Judgment (ECF No.
19 37) is denied without prejudice and may be refiled within thirty (30) days from the date the
20 stay in this case is lifted.

21 It is further ordered that BANA’s Motion to Stay Discovery (ECF No. 44) is denied
22 as moot.

23 DATED THIS 5th day of January 2018.

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25 
26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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